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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd May 2009

No. 4540—li/1(B)-88/2004-L E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th April 2009 in Industrial Dispute Case No. 42/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Ajaya Kumar, Rahul Kumar, Malgodown, Cuttack and their workman Shri Alekh Chandra Majhi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 42 OF 2005

Dated the 25th April 2009

Present :

Shri M. R. Tripathy,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of M/s Ajay Kumar, .. First Party—Management
Rahul Kumar, Malgodown, Cuttack.

And

Their workman .. Second Party—Workman
Shri Alekh Chandra Majhi

Appearances :

For first party—Management .. None

For second party—workman himself .. Shri A. C. Majhi

AWARD

The Government of Orissa in exercise of power conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of the dispute between the parties to this Court vide Order No. 7217—li-I(B)-88/2004-LE., dated the 24th August 2005 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The schedule of reference is as follows :

“Whether the action of the management of M/s Ajaya Kumar, Rahul Kumar, Malgodown, Cuttack in terminating the service of Shri Alekh Chandra Majhi, with effect from the 4th August 2003 is legal and/or justified ? If not, to what relief Shri Majhi is entitled ?”

3. The case of the workman may be briefly stated as follows :

He joined as a Salesman in the organisation of the management on the 1st February 2000. His duty was to convince the retailers about the new products and to supply the articles according to the orders placed by them. While he was working the management did not pay his wages for three months. When he asked for his wages the management terminated his services with effect from the 4th August 2003 without following the procedures provided in Section 25-F of the Industrial Disputes Act, 1947. He approached the labour machinery and a conciliation proceeding was initiated but ultimately it ended in failure and the matter was referred to this Court for adjudication.

4. The management was set *ex parte* vide order passed on the 8th August 2007.

5. The workman examined himself as W. W. 1 and filed some documents marked as Ext. 1 series and Ext. 2 series i. e. money receipts and challans of the management to prove his employment under the management. According to him he joined in his service on the 2nd February 2000 and worked continuously till the date of his termination of his service i. e. on the 4th August 2003. The management has been set *ex parte*, as such the oral and the documentary evidence adduced by him have remained unchallenged. It is stated by him that no notice or notice pay or compensation was paid to him at the time of termination of his service. According to settled position of law compliance of Section 25-F of the Industrial Disputes Act, 1947 is a condition precedent for retrenchment and as the management has not followed the same, I would say that his termination of service with effect from the 4th August 2003 is illegal and unjustified. Therefore, he is entitled to be reinstated in service.

6. While giving evidence on the 5th January 2009 the workman had stated that he was getting a consolidated salary of Rs. 1,800 per month which was subsequently enhanced to Rs. 2,500 per month. He filed a written argument on the 27th March 2009 wherein he has stated that initially he was getting a sum of Rs. 1,500 per month as salary which was subsequently enhanced to Rs. 1,800 per month from the month of March, 2003. He has nowhere

stated in the written argument that his salary was further enhanced to Rs. 2,500 per month. However as the management has been set *ex parte* so under the above circumstance his version that he was getting salary of Rs. 1,800 per month can be accepted. It is stated by him that the management has not paid his salary for three months before he was terminated from service. The management has not come forward to controvert the above fact and therefore, he is entitled to get his arrear wages for three months i. e. Rs. 5,400 in total. Admittedly he has not rendered any service to the management after he was terminated from service. Rather as it appears from his evidence he was working as an Agent of Bajaj Allianz Ltd. and Modi Care. So it can not be said that he is not gainfully employed anywhere. Therefore, it would not be appropriate to direct the management to pay any sum to him towards back wages.

7. In the written argument he has claimed for a sum of Rs. 6,00,000 as because his matriculation certificate has been retained by the management till now. A direction cannot be given to the management to pay compensation of Rs. 6,00,000 for retaining his matriculation certificate in the present case.

8. Hence Ordered :

The action of the management of M/s Ajay Kumar, Rahul Kumar, Malgodown, Cuttack in terminating the services of Shri Alekh Chandra Majhi, with effect from the 4th August 2003 is illegal and unjustified. The workman Shri Majhi is entitled to be reinstated in service but without any back wages. He is also entitled to get Rs. 5,400 towards his arrear salary for three months. The management is directed to implement this Award within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

M. R. TRIPATHY
25-4-2009
Presiding Officer
Labour Court, Bhubaneswar

M. R. TRIPATHY
25-4-2009
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government